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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON ERIC BENSON,
Plaintiff

vs.

THOMAS DURAN, et al.,
Defendants

: CIVIL ACTION NO.1:CV-00-1229
:
: (JUDGE CALDWELL)
:
: (MAGISTRATE JUDGE BLEWITT)
:
:

FILED
SCRANTON

OCT 24 2000

PLAINTIFF'S OPPOSITION TO DEFENDANT LONG'S
MOTION TO DISMISS COMPLAINT FOR FAILURE TO
EXHAUST AVAILABLE ADMINISTRATIVE REMEDIES

PER LMT
DEPUTY CLERK

AND NOW, comes plaintiff Jason E. Benson, and files this

Opposition to Defendant Long's, Motion to Dismiss Plaintiff's Complaint
for Failure to Exhaust Available Administrative Remedies and in
support thereof, avers as follows:

1. The defendant Long in his motion to dismiss, does not deny any of the issues of material fact that plaintiff have pleaded to the Court.
2. The defendant Long, is correct, in that, Congress has enacted legislation requiring inmates in prisons to exhaust their administrative remedies before they can file suit in the Federal Court pursuant to 42 U.S.C. §1983, 42 U.S.C. §1997(e)(a).
3. Although the defendant does not explain that the administrative remedy [Consolidated Inmate Grievance Review] system of the Department of Corrections is disreputable to say the least. This Court, probably more likely, than not, been a witness to the huge amounts of litigation that has transpired as a result of the defective grievance system in the D.O.C., and just recently, the Honorable Eastern District Court, has Adjudged the I.C.U., Consent Decree invalid and hampers the Depts, penalogical interests.

4. Furthermore, the "Inmate Citizen's Union" consent decree was the only insurance a prisoner had, when the D.O.C., decided to circumvent the procedures. Without the consent decree, inmate's do not stand a chance at receiving fair and impartial treatment.

5. Just recently, the Fifth Circuit Court of Appeals, has Adjudged a situation similar to the instant matter. The Court reasoned in Wright v. Hollingsworth, that "Inmate's civil rights action against prison nurse, alleging deliberate indifference to his serious medical needs based on nurse's alleged refusal to treat his ruptured eardrum, would not be subject to dismissal for 'failure to exhaust administrative remedies', if inmate's complaint sought only monetary relief, and if prison's grievance procedure did not permit an award of monetary damages." Civil Rights of Institutionalized Persons Act, §7(a), as amended, 42 U.S.C. §1997(e)(a): 201 F.3d 663,664 (5th Cir.2000); Whitley v. Hunt, 158 F.3d 882,887 (5th Cir.1998).

WHEREFORE, Plaintiff, Jason Eric Benson, respectfully requests this Honorable Court deny Defendant Long's, Motiton to Dismiss Plaintiff's Complaint for Failure to Exhaust Available Administrative Remedies and enter an order continuing the discovery.

Respectfully submitted,

Date: 10/17/00

By: 

Mr. Jason E. Benson, Plaintiff
#DS-6483, SCI-Smithfield
1120 Pike Street, P.O. Box 999
Huntingdon, PA 16652

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OCT 24 2000

CERTIFICATE OF SERVICE

I, Jason E. Benson, plaintiff, hereby certify that a PER EMP.
copy of the foregoing document was served upon the following, DEPUTY CLERK
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